

## REMARKS

The application has been reviewed in light of the Final Office Action dated January 26, 2005.

Claims 1-15 are currently pending in the application. In the Office Action, the Examiner has rejected Claim 1-3, 10, and 13 under 35 U.S.C. §103(a) as being unpatentable over *Vuorio et al.* (U.S. 6,535,748) in view of *Tran et al.* (U.S. 6,665,284), Claims 4-5 under 35 U.S.C. §103(a) as being unpatentable over *Vuorio* in view of *Tran*, and further in view of *Peterzell* (U.S. Publication No. 2002/0123319 A1), Claims 6-8, 11-12, and 14-15 under 35 U.S.C. §103(a) as being unpatentable over *Vuorio* in view of *Tran*, and further in view of *Jager* (U.S. 6,330,433 B1), and Claim 9 under 35 U.S.C. §103(a) as being unpatentable over *Vuorio* in view of *Tran*, and further in view of *McEwan* (U.S. 6,191,724). Additionally, the Examiner has objected to Claim 5.

With regard to the Examiner's objection to Claim 5, the Examiner asserts that this claim should be directed to the second reception path of the second receiver, not the first path of the first receiver. As shown above, Claim 5 has been amended as indicated by the Examiner. Accordingly, it is respectfully requested that the objection to Claim 5 be withdrawn.

As indicated above, all independent Claims, i.e., Claims 1, 10 and 13, have been rejected under 35 U.S.C. §103(a) as being unpatentable over *Vuorio* in view of *Tran*. More specifically, the Examiner asserts that *Vuorio* teaches all the recitation of these claims, except for an HDR system, which is allegedly taught in *Tran*. However, as shown above, Claim 1 has been amended to more clearly recite how the reception paths are used, i.e., to include recitations presented in original Claims 10 and 13.

With regard to Claims 10 and 13, the Examiner asserts that *Vuorio* teaches the step of determining if an HDR transmission is occurring. However, the Examiner cites no section of

*Vuorio* as teaching this step. Further, it is respectfully submitted that there is no section of *Vuorio* that teaches determining if an HDR transmission is occurring. Additionally, the Examiner admits that *Vuorio* does not teach an HDR wireless system. Therefore, it is clear that *Vuorio* would not, and does not, teach the step of determining if an HDR transmission is occurring.

Further, Claims 10 and 13, and amended Claim 1, each recite the operations of the reception and transmission paths, according to the wireless terminal providing an HDR service. The Examiner asserts that *Vuorio* teaches these operations. However, as indicated above, *Vuorio* makes no teachings concerning an HDR service.

The Examiner attempts to overcome this obvious shortcoming of *Vuorio* by citing *Tran*, which does teach an HDR service. However, it is respectfully submitted that the combination of *Vuorio* in view of *Tran* still does not provide the apparatus and method of the present invention. That is, while *Tran* does teach the existence of an HDR service, *Vuorio* does not teach using the different reception and transmission paths based on the data rate of signals, but instead uses alternative reception and transmission paths based on the frequencies of signals. Accordingly, it is respectfully submitted that the combination of *Vuorio* and *Tran* does not teach the reception and transmission paths, based on whether the wireless terminal is providing an HDR service. Therefore, it is respectfully submitted that the Examiner is incorrect in rejecting independent Claims 1, 10, and 13, and it is respectfully requested that the rejection of Claims 1, 10, and 13 be withdrawn.


Without conceding the patentability per se of dependent Claims 2-9, 11-12, and 14-15, it is submitted that these claims are allowable at least by virtue of their dependencies on independent Claims 1, 10, and 13, respectively. Reconsideration and allowance of Claims 2-9, 11-12, and 14-15 is also respectfully requested.

In view of the foregoing remarks, it is respectfully submitted that all pending claims, namely Claims 1-15, are in condition for allowance. Early and favorable consideration and allowance of Claims 1-5 is respectfully requested. Should the Examiner believe that a telephone or personal interview may facilitate resolution of any remaining matters, the Examiner is respectfully requested to contact Applicants' attorney at the number indicated below.

Respectfully submitted,

DILWORTH & BARRESE, LLP

By:

  
Paul J. Farrell  
Registration No. 33,494  
Attorney for Applicant

DILWORTH & BARRESE, LLP  
333 Earle Ovington Boulevard  
Uniondale, New York 11553  
(516) 228-8484  
(516) 228-8516 (FAX)  
PJF/DMO/las